

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY
CIVIL ACTION NO 16-MD-2738 (FLW) (LHG)

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IN RE JOHNSON & JOHNSON : TRANSCRIPT OF
POWDER PRODUCTS MARKETING, : STATUS CONFERENCE
SALES PRACTICES. : APRIL 29, 2019
----- :

CLARKSON S. FISHER UNITED STATES COURTHOUSE
402 EAST STATE STREET, TRENTON, NJ 08608

B E F O R E: THE HONORABLE FRED A. L. WOLFSON, USDJ

A P P E A R A N C E S:

BEASLEY ALLEN, ESQUIRES

BY: P. LEIGH O'DELL, ESQUIRE (ALABAMA)

-and-

ASHCRAFT & GEREL, ESQUIRES

BY: MICHELLE A. PARFITT, ESQUIRE (VIRGINIA)

-and-

LEVIN PAPANTONIO, ESQUIRES

BY: CHRISTOPHER V. TISI, ESQUIRE (FLORIDA)

-and-

MOTLEY RICE, ESQUIRES

BY: DANIEL R. LAPINSKI, ESQUIRE (NEW JERSEY)

-and-

LEVIN SEDRAN & BERMAN, ESQUIRES

BY: LAURENCE S. BERMAN, ESQUIRE (PENNSYLVANIA)

MICHAEL M. WEINKOWITZ, ESQUIRE (PENNSYLVANIA)

(Continued.)

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VINCENT RUSSONIELLO, RPR, CRR, CCR
OFFICIAL U.S. COURT REPORTER
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A P P E A R A N C E S C O N T I N U E D:

GOLOMB & HONIK, ESQUIRES

BY: RICHARD M. GOLOMB, ESQUIRE (PENNSYLVANIA)

On behalf of Plaintiffs Steering Committee

DRINKER, BIDDLE & REATH, ESQUIRES

BY: SUSAN M. SHARKO, ESQUIRE (NEW JERSEY)

JULIE L. TERSIGNI ESQUIRE (NEW JERSEY)

-and-

SKADDEN, ARPS, SLATE, MEAGHER & FLOM, ESQUIRES

BY: JOHN H. BEISNER, ESQUIRE (WASHINGTON, D.C.)

-and-

PROSKAUER ROSE, ESQUIRES

BY: BART H. WILLIAMS, ESQUIRE (CALIFORNIA)

LEE M. POPKIN, ESQUIRE (NEW YORK)

On behalf of Defendant Johnson & Johnson

SEYFARRTH & SHAW, ESQUIRES

BY: THOMAS L. LOCKE, ESQUIRE (WASHINGTON D.C.)

-and-

BARRY, McTIERNAN & WEDINGER, ESQUIRES

BY: JENNIFER N. CHEONG, ESQUIRE (NEW JERSEY)

On Behalf of Defendant Personal Care Products Council
(PCPC)

TUCKER ELLIS, ESQUIRES

BY: CAROLINE M. TINSLEY, ESQUIRE (MISSOURI)

On behalf of Defendants PTI Union, LLC and PTI
Royston, LLC

C E R T I F I C A T E

PURSUANT TO TITLE 28, U.S.C., SECTION 753, THE
FOLLOWING TRANSCRIPT IS CERTIFIED TO BE AN ACCURATE
TRANSCRIPTION OF MY STENOGRAPHIC NOTES IN THE
ABOVE-ENTITLED MATTER.

S/Vincent Russoniello
VINCENT RUSSONIELLO, CCR
OFFICIAL U.S. COURT REPORTER

1 (In open court.)

2

3 THE DEPUTY CLERK: All rise.

4 JUDGE WOLFSON: Thank you.

5 I'll have the appearances.

6 MS. PARFITT: Michelle Parfitt for the
7 plaintiffs.

8 MS. O'DELL: Good morning, your Honor.

9 Leigh O'Dell for the plaintiffs.

10 MR. TISI: Good morning, your Honor.

11 Chris Tisi for the plaintiffs.

12 MR. LAPINSKI: Good morning, your Honor.

13 Dan Lapinski for the plaintiffs.

14 MR. WEINKOWITZ: Good morning, your Honor.

15 Mike Weinkowitz for the plaintiffs.

16 MR. GOLOMB: Richard Golomb for the
17 plaintiffs.

18 MR. BERMAN: And Laurence Berman for the
19 plaintiffs.

20 JUDGE WOLFSON: Okay. Ms. Sharko.

21 MS. SHARKO: Susan Sharko for the J&J
22 defendants, and I'm very happy to say that Julie
23 Tersigni is back with us today.

24 JUDGE WOLFSON: We're happy, too.

25 MS. SHARKO: We also have Bart Williams from

1 the Proskauer firm. I mentioned him a while back as
2 one of the lawyers who is working with us on the
3 Daubert issues.

4 MR. WILLIAMS: Good morning.

5 JUDGE WOLFSON: Good morning.

6 MR. BEISNER: Good morning, your Honor.

7 John Beisner on behalf of the J&J defendants
8 as well.

9 MR. LOCKE: Good morning, your Honor.

10 Tom Locke for the Personal Care Products
11 Council.

12 MS. TINSLEY: Good morning, your Honor.

13 Caroline Tinsley for PTI Union and PTI
14 Royston.

15 JUDGE WOLFSON: Thank you.

16 By the way, before I begin, was there any
17 decision by the Delaware court on the venue motion?

18 MS. O'DELL: Not at this point, your Honor.

19 It's been filed. I understand that oppositions will
20 be due on May the 9th and we expect consideration of
21 that motion thereafter.

22 JUDGE WOLFSON: Okay. I don't know why Judge
23 Ferguson thought there was something coming last week.
24 But obviously briefing hasn't been completed. So that
25 was not accurate.

1 While I brought that up, in any event, let me
2 just turn to that for a moment, about what's been
3 going on in that connection.

4 I know Ms. Sharko had contacted our chambers
5 about the appropriate way of removing to our court,
6 and there were about nine cases I guess that had ended
7 up in Camden because they came out of Atlantic County
8 and that would have been the venue for it.

9 We had directed all of that to come up to
10 Trenton. So they have been transferred to Trenton so
11 there is just one location.

12 Also, I had an opportunity to confer with
13 Judge Ferguson, who is our Chief of the Bankruptcy
14 Court, and consistent with our standing order here in
15 New Jersey, which is that all the matters are referred
16 automatically to the bankruptcy court. It would not
17 get filed with us directly first. It would get filed
18 in the bankruptcy court.

19 That's what we told you, if you are going to
20 remove, to remove there and it would be handled there.
21 So my understanding is there were a number of removals
22 that were done last week to the bankruptcy court. Is
23 that correct?

24 MS. SHARKO: Yes.

25 JUDGE WOLFSON: Have they been assigned to a

1 particular bankruptcy judge at this point? I don't
2 know that you've gotten any indication of that.

3 Ms. Tersigni.

4 MS. TERSIGNI: So far they are all going to
5 Judge Ferguson.

6 JUDGE WOLFSON: Okay. She may have directed
7 that they all be assigned to her rather than randomly
8 assigned to someone else.

9 In the interim since this all came to light
10 last week, I had an opportunity to learn a little bit
11 about removal in bankruptcy. So that was the right
12 forum to at least go to and then there will be a
13 decision made whether there is any transfer or remand
14 from there.

15 MS. O'DELL: Your Honor, each of those
16 cases -- I think there are ten removed thus far at
17 least that we are aware of that have been assigned --
18 we understand all 524 some odd cases from state court
19 in New Jersey are going to be removed here. So there
20 will be remand motions filed.

21 And one of the questions we had today, and
22 maybe this will be a question we direct to the
23 bankruptcy court, would the Court be open to an
24 omnibus motion to remand? All of the cases are the
25 same.

1 JUDGE WOLFSON: They are going to have the
2 same issue involved. You can contact Judge Ferguson's
3 chambers since apparently they are being assigned to
4 her and get direction from her on that. I would think
5 it makes sense, but I'm not calling the shot on that
6 one.

7 MS. O'DELL: Your Honor, my understanding is
8 that Article 3 judges actually rule on the motion to
9 remand in those instances.

10 Will Judge Ferguson be issuing a
11 recommendation to your Honor and then you consider
12 that, or have you given thought to the procedural sort
13 of steps?

14 JUDGE WOLFSON: We haven't because it
15 certainly was her indication that she would be ruling
16 on it. She didn't indicate whether it was going to be
17 done by an R and R or as an actual decision. So we'll
18 have to see.

19 Now, you're basing that on what, that it has
20 to be an Article 3 judge, the remand?

21 MS. O'DELL: I confess that bankruptcy is new
22 law to me. So just in terms of the research that I
23 have done and others that practice in this area, that
24 the district judges are ruling on the jurisdictional
25 issues.

1 JUDGE WOLFSON: Okay.

2 MS. O'DELL: I just offer that as what we have
3 been told. There are a number of jurisdictions like
4 the District of New Jersey where motions automatically
5 go to the bankruptcy court, and I understand they are
6 being transferred, but we'll be in touch with Judge
7 Ferguson.

8 JUDGE WOLFSON: Be in touch with Judge
9 Ferguson, and I'll consult with her too once we know
10 what's going on. So that's with all of those cases.

11 Now, let's turn to where we are on your status
12 letter.

13 As you know, Judge Pisano did issue a decision
14 with regard to the communications with the experts in
15 Health Canada. You saw his letter of April 19th. I
16 guess he was waiting for confirmation from plaintiffs'
17 counsel as to how he interpreted your letters to
18 indicate that there have been no other communications
19 and they have all been turned over. Is that correct?

20 MS. PARFITT: That's correct, your Honor. I
21 affirmed with Judge Pisano that in fact and indeed
22 everything that we had now had been provided to
23 counsel and he seemed satisfied.

24 JUDGE WOLFSON: Okay. You have an issue still
25 pending before him with regard to the expert Moore and

1 additional time? Is that still pending?

2 MS. O'DELL: It is, your Honor. There was an
3 order that was issued on Thursday and it was entitled
4 I think an order regarding Nadia Moore, but in fact it
5 related to Dr. Saed and some lab notebook issues.

6 And so the issue with Dr. Moore and the letter
7 regarding the late produced reliance materials is
8 still before your Honor. And what's happened there
9 is, there were about 85 articles that we weren't aware
10 of as well as mixed analyses, and so we brought that
11 to Judge Pisano's attention and asked for after
12 additional time.

13 JUDGE WOLFSON: Okay. He's very quick. So
14 the fact that he titled that "Moore" I hope he didn't
15 overlook that that's out there.

16 MS. O'DELL: It appears he's aware of the
17 issues still before him.

18 Your Honor, while we are speaking of that
19 particular order in regard to Dr. Saed, there were a
20 number of factual findings in the order that we are
21 really concerned about and we feel the record doesn't
22 support it. So we want to make the Court aware that
23 we plan to file an appeal.

24 Specifically, Judge Pisano I believe had the
25 impression that there was commingling of data in the

1 lab notebooks. That's not accurate. The particular
2 studies at issue --

3 JUDGE WOLFSON: You won't have to argue it
4 today. Put it as part of your appeal.

5 MS. O'DELL: We'll do that, your Honor.

6 JUDGE WOLFSON: Since you've already
7 highlighted for me that that's coming. So I'll wait
8 to see that.

9 MS. O'DELL: Yes, your Honor.

10 JUDGE WOLFSON: I'll go right through this the
11 way you have it set forth in your status letter.

12 The issue of funding of articles written by
13 plaintiffs' experts, I saw the plaintiffs' position
14 which is taking a privilege position that it was work
15 product. But, in any event, ending the statement
16 with:

17 "Notwithstanding the foregoing, and without
18 waiving the right to oppose similar requests in the
19 future, the PSC states that it did not provide funding
20 for the studies in question."

21 MS. PARFITT: Your Honor, that is the correct
22 position. We did have a chance to speak with Ms.
23 Sharko a bit this morning about that and affirmed
24 again that the plaintiffs' attorneys had no role in
25 any funding, that we were not aware of any funding,

1 and perhaps it wasn't as artfully and clearly
2 articulated in the brief, but that is the correct
3 position and we relayed that to Ms. Sharko this
4 morning. I think we have an understanding.

5 JUDGE WOLFSON: Does that satisfy your
6 inquiry, Ms. Sharko?

7 MS. SHARKO: Yes. Based on the conversation
8 this morning, I just asked Ms. Parfitt to send me a
9 letter. But she affirmed that they weren't aware of
10 any lawyers funding the three studies.

11 In fact, they didn't even contact Dr. Eslick
12 until after the paper was published. So that resolves
13 it, if she can just send me a letter.

14 JUDGE WOLFSON: Okay. Although, of course, it
15 is on the record today as well, the representation.

16 MS. SHARKO: That's true. Thank you.

17 JUDGE WOLFSON: And I know you all get
18 transcripts.

19 MS. PARFITT: Does that suffice?

20 JUDGE WOLFSON: I think it suffices. I have
21 your representation on the record and that's pretty
22 clear.

23 Now, let's turn to Daubert briefing.

24 Apparently, you both agree that you would like
25 to have very extensive briefing. Defendants

1 suggesting 500 pages and plaintiffs saying, Oh, don't
2 limit me in that way. Of course, it's giving me great
3 pause, but it is what it is.

4 And when you say that this is the briefing,
5 this is the actual briefing. We're not talking about
6 exhibits or anything else. Correct?

7 MS. SHARKO: Correct.

8 JUDGE WOLFSON: I take it, it's all in the
9 works right now, so you have an idea?

10 MS. SHARKO: Yes. We are moving ahead very
11 quickly to finalizing it. We are a little above 500,
12 but we're trying to get it down to 500. We are also
13 spending a lot of time organizing the exhibits, so
14 there is one master set of exhibits to work from.

15 JUDGE WOLFSON: How many experts are there?

16 MS. SHARKO: The plaintiffs have 22.

17 JUDGE WOLFSON: And you are bringing a Daubert
18 motion as to each of those 22?

19 MS. SHARKO: Yes. But we are organizing the
20 motions thematically. One motion will cover all the
21 epidemiology issues; one will cover the biologic
22 plausibility issues, et cetera.

23 JUDGE WOLFSON: I know when you say "one
24 motion," you are doing this as one omnibus filing
25 you've asked me for.

1 MS. SHARKO: Correct.

2 JUDGE WOLFSON: With a divided up by each of
3 these experts or these themes, as you call them. I
4 really want to have a picture of what this is looking
5 like. Is it one filing? Is that what we're talking
6 about?

7 Maybe I read your letter incorrectly. I took
8 it as being one omnibus brief that was divided up into
9 sections as to the various experts, so we don't
10 necessarily have to repeat facts at different times
11 and things like that.

12 So you're talking about separate briefing that
13 will total 500 pages?

14 MS. SHARKO: Yes.

15 JUDGE WOLFSON: Okay. Separate briefing.

16 MS. SHARKO: Right. Six individual briefs
17 under one omnibus motion and the notice of motion
18 provides a short road map through the brief, which
19 issues are where, which experts are where, which
20 pieces of their opinions are where.

21 JUDGE WOLFSON: Six motions then.

22 MS. SHARKO: Yes.

23 JUDGE WOLFSON: Because you divided them up
24 into subject areas.

25 MS. SHARKO: Correct. But still 500 pages.

1 JUDGE WOLFSON: Okay. I got it.

2 On your side how many experts are you
3 attacking?

4 MS. PARFITT: Your Honor, we have about 17 at
5 this point in time as well. What we have done, and
6 it's quite similar, instead of thematically we will be
7 producing an omnibus brief as well but the
8 disciplines. We've broken it down into epidemiology,
9 and we'll deal with all of those experts, and then
10 we'll go to toxicology. So, again, it will be a more
11 concise presentation to the Court.

12 JUDGE WOLFSON: It's interesting you use
13 "concise," when we're talking over 500 pages.

14 MS. PARFITT: That is true.

15 And then what we would like to do, your Honor,
16 is with regard to the section on epidemiology, we will
17 have the appendices and any relevant exhibits with the
18 epidemiology group, and then there will be a separate
19 appendices with the toxicology, so the Court has
20 available to her that information right in front of
21 you instead of some large appendices that you have to
22 go searching for.

23 So we are trying to make it as reader friendly
24 as we possible can and we will obviously try and do
25 our very best to get the page numbers down. We have

1 an interest in doing that as well. We believe in
2 brevity and the we'll try and exercise that.

3 JUDGE WOLFSON: Okay. I hear you and I
4 understand that you are all trying to work without
5 giving me more paper than I require. So I appreciate
6 that we are talking about something very substantial.

7 At this point, frankly, assuming that everyone
8 is doing what they should be doing to try and be as
9 direct and concise, let me just say 500 pages is
10 arbitrary. If we're dealing with our regular page
11 limits under the rules and somebody says, I need 60, I
12 understand it. At the level of 500, what's the
13 difference between 500 and 550?

14 So I'm not going to put a page limit on it.
15 Do what you have to do. But keep in mind you don't
16 want me reading more than I have to. Don't repeat
17 yourselves and don't make yourselves crazy trying to
18 cut it down, as you said, if you are a little over
19 500. Don't waste your time. Another 20 pages is
20 another 20 pages.

21 MS. SHARKO: Thank you.

22 JUDGE WOLFSON: All right. So I won't put a
23 page limit on, but keep that in mind really. That's a
24 tremendous amount of reading and to prepare for. So I
25 really do want you to say what you have to say and not

1 more than you have to say.

2 Now, let's talk about the real issue that you
3 have identified for me.

4 MR. LAPINSKI: Your Honor, if I could just ask
5 a question in regard to the briefing itself?

6 JUDGE WOLFSON: Yes.

7 MR. LAPINSKI: A simple question: How many
8 hard copies does the Court want?

9 JUDGE WOLFSON: Two.

10 MR. LAPINSKI: Okay. Thank you.

11 And are we able to send that the next day as
12 compared to having it filed on Tuesday? Because I
13 know the electronic filing is going to be hours of
14 work that will have to be done.

15 JUDGE WOLFSON: Right.

16 MR. LAPINSKI: Okay. Thank you.

17 JUDGE WOLFSON: You're going to overnight it
18 or deliver it to me, hand-deliver it. I don't care
19 how you do it. Believe me, it will not be the first
20 thing I open that day.

21 So let's talk about the issue that has come
22 up. The defendants have suggested that we not deal
23 with qualifications at this stage, and the plaintiffs
24 have taken the position that they very much want to
25 deal with the qualifications issue.

1 We all know qualifications is part of the
2 Daubert analysis. That's not in dispute. Neither
3 side disputes that.

4 I guess what I want to talk about with you a
5 little bit is, if what we are talking about on
6 qualifications is: Is the individual who is opining,
7 is that specialty the one that all of the opinions are
8 directed to? Does it go beyond that?

9 As opposed to: Do you really think this is
10 the person that has the right education and experience
11 to opine? I'm not sure which it is that you are going
12 to be talking about.

13 Excuse me. I'm getting info about your
14 Delaware case.

15 (Pause.)

16 JUDGE WOLFSON: Apparently, the judge just
17 indicated it's not emergent. She will wait for the
18 briefs and she will decide about whether to even have
19 oral argument, and I guess the message is that it
20 could take a little while. That's the update on
21 Delaware.

22 So I'm trying to get a feel of what it is. I
23 will tell you, in my Daubert hearings in the past,
24 frankly, I have found that the time that's spent on
25 qualifications has been wasteful to me oftentimes.

1 Unless I'm having, as I said, a real issue
2 that someone does not have the background, that
3 someone just really shouldn't be an expert, that's
4 really the case.

5 Usually, it's more than an issue of: What is
6 the breadth of the opinions that the expert is giving
7 and are there certain of the opinions that perhaps
8 should be limited because some of those opinions are
9 going beyond the expertise of that expert? That's
10 usually what I have.

11 So it's generally not the general
12 qualifications and being qualified to be an expert in
13 the area. I think it's more going to the opinions
14 that they are giving. Right? Is that what we are
15 going to be talking about?

16 MS. PARFITT: Your Honor, if I may be heard?

17 JUDGE WOLFSON: Yes.

18 MS. PARFITT: I believe that it may go a
19 little bit further than that. The position the
20 plaintiffs have taken is clearly, as you stated,
21 qualifications is one prong of the Daubert analysis.

22 In this case plaintiffs have endeavored over
23 the last year to produce not only expert reports but
24 also testimony from their experts whose qualifications
25 allow them to talk about the subject matter that will

1 assist the trier of fact.

2 What we have seen with regard to the defense
3 experts are individuals who may be doctors or Ph.D.s
4 but whose background does not in our mind and to our
5 thinking and our challenge should allow them to
6 actually give expert testimony in certain areas that
7 they are rendering, opinions that are rendering, and
8 even qualifications that might entirely cause this
9 Court to view that brief and that individual as
10 someone who should not be testifying in this case.

11 So I think what we would like to do is take
12 the opportunity to make the appropriate challenges.
13 We will not waste the Court's time. Those that it
14 would not be appropriate, we'll make those decisions.
15 In the course of briefing, we won't waste your time.

16 But I think to suggest that we don't have an
17 opportunity -- and I'm not saying that you are -- to
18 challenge the qualifications would be obviously
19 inappropriate under the Daubert standard.

20 So we would ask for the opportunity to do
21 that. If defendants don't want to do that, again, it
22 will take less time to do that, we certainly
23 understand. But I assure the Court that any
24 objections with regard to qualifications or any
25 arguments that we make will be appropriate and we'll

1 not waste the Court's time. We have X amount of paper
2 in challenges to make, so we know we need to use our
3 time wisely as well, and we expect to do that and we
4 will do that.

5 MS. SHARKO: So we have a Blue Ribbon Panel of
6 highly qualified experts. I think your Honor will
7 conclude as you read the reports. They are not
8 professional witnesses, but they are true scientists.
9 So I take strong issue with everything Ms. Parfitt
10 just said about the defense experts.

11 Beyond that, the reason we raised the question
12 is exactly for the reason your Honor articulated.

13 JUDGE WOLFSON: Just give me one second.

14 (Pause.)

15 JUDGE WOLFSON: I hear where everyone is now.
16 I'm hearing that the plaintiffs seem to feel with some
17 experts, assuming you are not meaning all, that with
18 some experts you think that they are not qualified at
19 all to be an expert in the area.

20 MS. PARFITT: In some cases with the expertise
21 that they attempt to give, that's correct, your Honor.

22 JUDGE WOLFSON: Okay. My compromise would be
23 as follows: To the extent that the objection is to
24 the qualifications of an expert serving as an expert
25 at all in the area in which that expert is opining, go

1 ahead and brief it and make your objection.

2 If the objection is not that that person is
3 not an expert in the area, but you think that there
4 are certain opinions that may be limited, please note
5 that you are reserving your right to do so, but we
6 won't address that at this time.

7 MS. SHARKO: Okay. Thank you.

8 JUDGE WOLFSON: Ms. Parfitt, you look
9 confused.

10 MS. PARFITT: I am. I think I'm trying to
11 make sure I get the clarification of the Court. I
12 think, your Honor, obviously, it goes to the weight
13 then.

14 JUDGE WOLFSON: To the weight, exactly right.

15 MS. PARFITT: So I think what you are
16 suggesting to us is that if it goes to the weight,
17 don't bother.

18 JUDGE WOLFSON: Right.

19 MS. PARFITT: If it goes to -- I'm just trying
20 to process how that is actually written because
21 sometimes they are very intertwined, your Honor, and I
22 think you can appreciate that, that it's fairly
23 intertwined in certain circumstances. That's why I'm
24 looking for clarification.

25 JUDGE WOLFSON: I don't know what your

1 objections are going to look like. I guess what I
2 tried to make clear is, if you have a wholesale
3 objection to an expert because you say, This is not
4 someone who can really talk about the toxicology.
5 Their expertise has been in these areas. And while
6 they may have some knowledge in that area, we do not
7 think its sufficient to give expert testimony in that
8 area.

9 So you have a wholesale objection to that
10 expert giving any opinions --

11 MS. PARFITT: In that area.

12 JUDGE WOLFSON: In that area.

13 But, on the other hand, if what you've got is
14 you think that as to one particular opinion that that
15 expert has given, while they are an appropriate
16 toxicologist and they can generally talk about the
17 area, but there may be one thing they are talking
18 about that you don't think they have the expertise on,
19 that I don't want to see right now because ultimately
20 that will go to the weight of their opinion.

21 MS. O'DELL: Your Honor, may I raise an issue?

22 JUDGE WOLFSON: Yes.

23 MS. O'DELL: You've given an example of how
24 there may be some unique circumstances that deal with
25 that very issue, and the one that comes to find is Dr.

1 Ann Wylie. It's one of the defense experts.

2 This would be an instance where it would be
3 difficult for us not to put forward our challenge now
4 because many of the defense expert reports are focused
5 on not original opinions themselves, but criticisms of
6 the plaintiffs' experts.

7 In the case of Dr. Wylie, one of her
8 criticisms relates to Dr. Longo's methodology
9 regarding TEM or transmission electron microscopy
10 testing of the historical samples.

11 Dr. Wylie has published on polarized light
12 microscopy. She's qualified in that area. But she's
13 never published in the area of TEM. She doesn't do
14 TEM testing and she has not looked at talc itself.

15 So without bringing the whole argument, I
16 would say this would be on appropriate time to bring
17 the challenge to Dr. Wylie's expertise and
18 qualifications regarding the TEM because it goes to
19 her criticism of Dr. Longo.

20 And so unlike some of the maybe more normal
21 challenges where it would only goes to weight, we feel
22 that challenge is very important to be brought now.
23 So we would just urge the Court to give us an
24 opportunity to bring whatever qualifications
25 challenges we feel are appropriate. We will endeavor

1 not to bring ones that would waste the Court's time,
2 but that's a very important type of challenge at this
3 juncture.

4 JUDGE WOLFSON: What are you contemplating by
5 qualifications challenges on the defense side against
6 plaintiffs experts?

7 MS. SHARKO: So knowing the law in New Jersey,
8 for example, the Magistrini and the Pineda cases, the
9 courts are pretty liberal on qualifications. And so I
10 was looking at it the way your Honor said because in
11 my experience in Daubert motions people spend a huge
12 amount of time on qualification issues that really
13 should be reserved for later on if the case goes to
14 trial.

15 So that's why we raised it because, yes, we
16 could write briefs about how Dr. Clarke-Pearson is a
17 gynecologist and now he's offering opinions about
18 inhalation of asbestos and epidemiology and these
19 other things. But it seems to me that should wait.

20 All of these experts on our side are highly
21 qualified. All of the experts on the plaintiffs' side
22 are probably qualified to talk about something. They
23 may not be qualified to talk about everything in their
24 opinions, but I think our time is best focused on the
25 big picture issue.

1 MS. PARFITT: Your Honor, not to beat the dead
2 horse, but it's interesting that we are not raising
3 the qualification issue. It's the defense that are
4 raising the qualifications asking it be waived.

5 JUDGE WOLFSON: Not waived.

6 MS. PARFITT: And I know you're not doing
7 that.

8 JUDGE WOLFSON: And they haven't asked it
9 either. I think what their suggestion is, at this
10 juncture it doesn't make sense to spend the time on
11 it, and that's something obviously better done as we
12 approach trial assuming that the experts are qualified
13 otherwise to give the opinions that the opinions
14 satisfy the Daubert standards.

15 I understand that some of this may be
16 intertwined. I get it. I guess what I really wanted
17 to do is -- go ahead. You wanted to say something
18 else before I make my comments.

19 MS. PARFITT: I do appreciate that, your
20 Honor, and I think the Court is hearing what we are
21 trying to say. This is our opportunity during the
22 Daubert process to make those kinds of challenges and
23 I guess I would urge the Court, just as we have done I
24 think up to this point in time, that we are not here
25 to waste the Court's time listening to the Court.

1 We won't make those kinds of arguments that
2 the Court would come back and say, See, I told you
3 that you are going to waste my time. We're not going
4 to do that. But there are certain circumstances and
5 there will be certain experts where I think it's very
6 relevant.

7 This is our time. We want to get to a trial.
8 And like the Court, we recognize the importance of
9 these challenges now on who should be able to stand
10 before the Court and who should not. We need to
11 appropriately give the Court at least the facts and
12 the information and let the Court decide ultimately.

13 That's all we are endeavoring to do, to afford
14 the opportunity which Daubert permits. Again, we'll
15 use great objectivity and good judgment with regard to
16 the arguments. I don't want to hear from the Court
17 either that I wasted her time.

18 JUDGE WOLFSON: No, you don't want to do that.

19 MS. PARFITT: I know. I don't.

20 JUSGE WOLFSON: I have infinite patience but
21 there is a limit.

22 MS. PARFITT: I understand. And we do have --
23 I'm not sure that we need it, but we've done a quick
24 letter brief, your Honor, on it, everything the Court
25 has said.

1 JUDGE WOLFSON: Let me do the following: I
2 really don't want to make this an issue down the line
3 when all we are trying to do is find a way to go about
4 this process which is going to be lengthy and tedious
5 in a most expeditious way.

6 I'm not going to bar you from making a
7 qualification argument. What I would like you to do,
8 though, is I don't want extensive briefing on it. If
9 what you want to do, so that it's made clear to me, as
10 you said a moment ago, if you want to highlight for me
11 me that on a particular expert you think that they did
12 not have the background and expertise to opine on that
13 particular issue, fine, highlight it for me.

14 I don't need chapter and verse on it. You
15 preserved your right. That's true on both sides.
16 Just as you've just done. You said you've got someone
17 that's a gynecologist but now they are talking about
18 other things. Highlight it for me.

19 I don't want extensive briefing on it. I
20 don't need to know the law on qualifications. I know
21 the law on qualifications. If you want to tell me as
22 to a particular expert that issue, let me know about
23 it. You can put it in your briefing.

24 MS. PARFITT: Thank you.

25 MS. SHARKO: Thank you.

1 JUDGE WOLFSON: While we are on Daubert, let's
2 look at our schedule again.

3 Is it the intent to -- all of these
4 challenges, you've got 22, you've got 17. That's 39
5 experts. Are we talking about bringing them all in to
6 testify or are there only certain ones and you are
7 relying on the papers as to others?

8 MS. PARFITT: Your Honor, I believe a session
9 ago, a status conference ago, the Court indicated that
10 you yourself might have certain individuals that you
11 would wish to hear from. There may be certain
12 individuals that we want the Court to hear from and I
13 think you mentioned the defense as well.

14 We haven't talked prior to today how you
15 envision this process to be. You are absolutely
16 correct. We've got 39. I assume the Court will be
17 reading the papers and deciding initially who you may
18 feel you may need to hear from, and of course we want
19 to hear that from you.

20 We need to know from you those individuals
21 where you may have some questions, and there may be
22 some individuals that we would like the Court to hear
23 from as well. We haven't really talked about it.

24 JUDGE WOLFSON: I would like to talk about it
25 today. We're getting too close to the time and people

1 have to plan schedules for experts and things of that
2 nature.

3 MS. PARFITT: That's right.

4 JUDGE WOLFSON: Yes, Mr. Williams.

5 MR. WILLIAMS: Your Honor, all I was going to
6 say -- Bart Williams for Johnson and Johnson.

7 We actually agree with the point that was just
8 made by Ms. Parfitt, that after all the briefing is in
9 we would welcome the Court focusing us on what the
10 Court really wants to hear since this is a lot of
11 witnesses and we would react to that, as long as we
12 have an opportunity on both sides to make some sort of
13 recommendations to the Court for its consideration.

14 JUDGE WOLFSON: This is what I'm going to
15 suggest having listened to both of you.

16 First of all, the briefing will be complete on
17 what date?

18 MS. O'DELL: I believe June the 12th.

19 JUDGE WOLFSON: It's not a lot of time in
20 between then and when we are starting the hearings.
21 We start on July 22nd. Right?

22 MR. WILLIAMS: Correct.

23 MS. O'DELL: Correct.

24 JUDGE WOLFSON: It's not a lot of time. It's
25 about a month of time where I've got a number of other

1 things in there as well including a couple of Judicial
2 Conferences that I sit on that I have to travel for.

3 So what I think I would like you to do is,
4 when you submit your briefing, for you to very
5 carefully also point out who you think would be
6 critical experts that would be beneficial for me to
7 hear, and I would like to have your input as I'm
8 reading, and I'll let you know if I agree or not, but
9 then I'll respond to that.

10 I would rather do it that way because you must
11 have in mind certain people that you would like me to
12 hear.

13 MR. WILLIAMS: Very well your Honor.

14 MS. O'DELL: Your Honor, may I just ask a
15 quick question?

16 JUDGE WOLFSON: Yes.

17 MS. O'DELL: When you say submit it with
18 briefing, are you meaning with the June 12th briefing
19 we would submit the witnesses at that point?

20 JUDGE WOLFSON: Yes, at the end, not at the
21 beginning.

22 MS. O'DELL: Thank you.

23 JUDGE WOLFSON: I have you blocked out for the
24 whole week of June 22nd. I have you on for the week
25 of the 29th, but I'm not going to see you on Friday,

1 the 2nd. So you have four days that week, and I'm out
2 the following week.

3 Then I have us picking up again on
4 August 19th, if necessary, and essentially I have the
5 last half of August available for you. Hopefully,
6 we're going nowhere near all that time. But somewhere
7 in there I may have to fill in a sentencing here or
8 there as well, but hopefully not too much time.

9 If you had to -- I know it's pure conjecture
10 at this point -- but if you were thinking in your own
11 mind how many experts you think would be coming in,
12 what would it be on the plaintiffs' side?

13 MS. PARFITT: Your Honor, we certainly know
14 from our own people, but we haven't seen the
15 challenges. At this moment in time, we are not sure
16 what the challenges are; what the defense is going to
17 argue against our folks, we don't really know.

18 We may think a particular individual is a
19 stellar person, and we may still feel that after we
20 look at their brief. But it may be a little easier to
21 assess that after we see their briefing, and similarly
22 when they get our challenges to their folks. We'll
23 probably all be a little better positioned to know
24 that.

25 JUDGE WOLFSON: I would just like to hone in

1 on the schedule a little bit better.

2 MS. PARFITT: I appreciate that, your Honor.
3 I would like to give you a better answer, but I'm not
4 sure that I can.

5 JUDGE WOLFSON: My concern is for some of that
6 July period, it's really going to require me to not
7 deal with any criminal. August tends to be a slower
8 month for us, as you know, so it's easy for me to know
9 those last two weeks in August. So I'm trying to see
10 if I can work a couple of days in here in July.

11 So as a result of that, before I skip ahead to
12 the rest of your status, I think I would like to
13 schedule your next status conference after the
14 briefing is done in June, so then we can talk about it
15 on that day. I will not have read all of your
16 briefing by the time you come in in June, but we can
17 at least talk.

18 We have you on June 27th. That works. That
19 works for us to plan ahead. We have you on for
20 June 27th at 10:30.

21 MS. SHARKO: Do you want us to have a call in
22 May after the first round of briefing to discuss this?

23 JUDGE WOLFSON: I don't think so. I think
24 I'll let you go through the briefing process and
25 discuss it in June. I'll have your list on June 12th

1 when you submit your last briefing. Each one of you
2 will give me whatever recommendations you have.

3 I'm not setting any other statuses at this
4 point because I'm going to see you in July. So we're
5 all set.

6 Now, with regard to every status conference we
7 had, we still have the status of cases that were
8 re-filed per the Case Management Order No. 8, and we
9 still have a number of cases that involve a
10 substantial number of plaintiffs that have motions for
11 remand pending and therefore there has been no filing
12 of the short form complaint. Right?

13 MS. O'DELL: That's right your Honor.

14 JUDGE WOLFSON: Some plaintiffs have re-filed
15 in California and New Jersey based on agreements
16 between the parties, and there are some duplicate
17 filed MDL cases that you are still working on
18 submitting an order to me to have them dismissed here.
19 Correct?

20 MS. PARFITT: That's right, your Honor.

21 JUDGE WOLFSON: Now, we've got apparently --
22 I'm looking at page 4 of your status letter. It says:

23 "There are approximately 261 plaintiffs who
24 have not filed short form complaints pursuant to CMO
25 8. Defendants request that the Court order these

1 plaintiffs to file short form complaints by May 31,
2 2019."

3 MS. O'DELL: Your Honor, our position on that
4 is that we just got the list and we need time to reach
5 out to individual counsel to reconcile it and really
6 know what universe of cases we are dealing with and
7 can address it from there. But we are already
8 actively doing that.

9 JUDGE WOLFSON: Are you telling me, therefore,
10 you can't live with the May 31st date?

11 MS. O'DELL: That's right, your Honor.

12 We just need time to know if that's the
13 correct list. Undoubtedly, there will be some cases
14 that there is a short form complaint filed. That has
15 been our experience in the past and we need to
16 communicate that and make sure that it is a correct
17 list, and then I think it would be very reasonable to
18 think that we could set a date in June to have short
19 form complaints filed, but May 31st would probably not
20 give us sufficient time.

21 It's better if it's June 30. I don't know
22 what day that is. But that is just pushing it 30
23 days, or maybe July 1st, which is a Monday would give
24 us sufficient time to alert counsel and make sure they
25 are aware of the situation.

1 JUDGE WOLFSON: Ms. Sharko, I don't think you
2 have a major objection to it.

3 MS. SHARKO: No. We keep sending out the
4 list, but July 1st is fine. Thank you.

5 JUDGE WOLFSON: All right. July 1.

6 The next one talks about 55 plaintiffs with
7 multiple cases pending, and this is another one where
8 the plaintiffs indicate that they are still reviewing.

9 MS. PARFITT: Your Honor, that's correct.

10 I'm looking at a list that my office printed
11 out and it's more than 55. That makes me a bit
12 concerned that we need to get our arms around it.
13 I've talked to counsel as well. We're going to talk
14 about it and we'll go through the list.

15 JUDGE WOLFSON: That you could do by May 31.

16 MS. PARFITT: May 31. All right. We will
17 talk soon.

18 Your Honor, I have every reason and hope that
19 I can because I have many other things to do and I
20 want to get past this one as well. But in the event
21 we are having difficulty locating a counsel -- again,
22 these are not us.

23 These are people outside of the world of
24 people sitting here today. If I should have a
25 problem, I would just ask the Court's indulgence on

1 those that we may not be able to track down.

2 JUDGE WOLFSON: If you have particular ones,
3 if we have a date that's a cutoff date, we will make
4 sure that we're working towards that. I understand.
5 If there is a particular one, you can inform defense
6 counsel about that.

7 We already talked about the removal and the
8 remands.

9 Anything else you want to tell me in
10 particular about cases pending in other jurisdictions?

11 MS. O'DELL: Nothing further than what we have
12 already said, your Honor. I believe it's all about
13 removals and remands.

14 JUDGE WOLFSON: I know. And we have many
15 remands. I'll admit I have many. It's the next thing
16 that I'm turning to, among other things that I know,
17 and I'm going to try to do them in batches and issues
18 that are similar and try and get these out for you.
19 They will be worked on. It's becoming a late spring
20 early summer project.

21 Anything else you want to address while we are
22 here today?

23 MS. O'DELL: Your Honor, one brief item.

24 It's been some months ago now that I raised
25 with the Court the fact that Mark Whitehead, a member

1 of the Plaintiffs Steering Committee, had been in a
2 place where he had health issues. He wasn't able to
3 participate in activities with the Plaintiffs Steering
4 Committee. Thankfully, he is improving but still is
5 in that posture.

6 So I wanted to alert the Court we will be
7 submitting a letter with a proposed order to the Court
8 accepting Mr. Whiteheads's resignation and moving to
9 have Mr. Tisi appointed to the Plaintiffs Steering
10 Committee. He certainly has been doing yeoman's work
11 for many months and we just had him added to the
12 Plaintiffs Steering Committee.

13 JUDGE WOLFSON: Defense is taking no position
14 on that, I'm assuming.

15 MS. SHARKO: Correct.

16 JUDGE WOLFSON: Okay. Send that in.

17 Anything else that's going to come my way
18 before I see you in June and you submit your master
19 filings?

20 Remember also as you go along I want to remind
21 you -- I don't know what else might be coming -- that
22 Dropbox system doesn't work for us. So we need the
23 hard copies on these big filings, and sadly for you on
24 one of those to still highlight the hard copy briefs
25 and tabs on it. That's the way I do it. Maybe some

1 day I'll get better.

2 MS. PARFITT: I join you on that, your Honor.

3 JUDGE WOLFSON: Still that yellow highlighter
4 is the way I like to go.

5 If there is nothing else, I'll let you all go
6 on and do what else you have to do today.

7 THE DEPUTY CLERK: All rise.

8 (Proceedings concluded.)

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